



LAW OF OBLIGATIONS

DIFC LAW NO. 5 OF 2005

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DIFC Law No. 3 of 2024

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DIFC Law No. 2 of 2022

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PART 1: GENERAL

1. Title

This Law may be cited as ‘The Law of Obligations 2005’.

2. Legislative Authority

This Law is made by the Ruler of Dubai.

3. Application of the Law

This Law applies in the jurisdiction of the Dubai International Financial Centre.

4. Date of enactment

This Law is enacted on the date specified in the Enactment Notice in respect of this Law.

5. Commencement

This Law comes into force on the date specified in the Enactment Notice in respect of this Law.

6. Interpretation

Schedule 1 contains:

- (a) interpretative provisions which apply to this Law; and
- (b) a list of defined terms used in this Law.

7. Non-assignment of right of action

- (1) A right of action based on personal injury arising under this Law cannot be assigned.
- (2) A purported assignment of such a right of action is void.
- (3) Article 7(2) does not prohibit the assignment of contractual rights where not expressly prohibited in the subject contract nor does it prohibit the assignment of the proceeds arising from such rights of action or the proceeds from a right of action based on personal injury.

8. Rights cumulative

- (1) The existence of a right of action under this Law is without prejudice to any other right of action under this Law or any other law.
- (2) A claimant may sue a defendant in respect of any right of action under this Law.

9. Limitation

- (1) Notwithstanding Article 38 of the Court Law, where a cause of action arises as a result of fraud by the defendant, there is no time limit before which the action must be commenced.
- (2) For the purposes of an action brought under Chapters 2, 3, or 4 of Part 3, a cause of action arises on the earliest date on which the claimant knows or ought reasonably to know about the loss that gives rise to the cause of action, provided that any action is brought within fifteen (15) years of the date that the cause of action in fact arose.

- (3) A person who seeks to recover a contribution from another person pursuant to Article 14 must bring an action to recover it within three (3) years of the date that judgment was given against him by the Court or he agreed to make a payment in settlement of a claim, as the case may be.

10. Causation

- (1) To establish liability under this Law, a claimant must show that, but for the defendant's conduct, he would not have suffered loss, and that the defendant's conduct was a substantial cause of his loss.
- (2) Once a claimant has shown that the defendant's conduct caused his loss, within the meaning of this Article, and assuming that all other requirements for the defendant to be liable are made out, the defendant is liable for the claimant's entire loss, subject to Chapter 1 of Part 3 and the Law on Damages and Remedies.

11. Intervening act

Where the defendant's conduct caused loss to the claimant within the meaning of Article 10, the defendant is not responsible for loss to the claimant to the extent that a supervening event has the result that the defendant's conduct is no longer an operative cause of the claimant's loss.

PART 2: CAPACITY

12. Capacity

- (1) Except as otherwise provided in this Law, all persons are entitled to sue and are liable to be sued in actions under this Law.
- (2) No person is liable to be sued in actions under this Law who is under the age of seven years at the time of his act or omission that, but for this Article 12(2), would give rise to a liability.

PART 3: OBLIGATIONS OF GENERAL APPLICATION

CHAPTER 1 – APPORTIONMENT OF LIABILITY

13. Joint and several liability

- (1) A claimant has the right to sue any number of persons whom he considers to be jointly or severally liable in respect of any liability to him under this Law, subject to any rules of the Court limiting this right.
- (2) Persons who are jointly liable, or severally liable in respect of the same loss, are liable for the whole loss.
- (3) Persons who are severally liable in respect of different loss are each liable only for the loss that each has caused.

14. Apportionment of joint and several liability

- (1) A person who is liable under this Law for any loss may recover contribution from any other person who is liable in respect of the same loss.
- (2) A person who makes a payment in settlement of a claim arising under this Law may recover from any other person who would have been liable in respect of the same loss if the factual basis of the claim against him could be established.
- (3) A contribution recovered under this Article is such that the arbitrator or the Court finds to be just, having regard to that person's responsibility for the loss in question.

15. Vicarious liability

- (1) An employer is jointly liable with his employee in respect of liability of the employee under this Law arising in the course of his service.
- (2) Where a relationship of service exists under which a person ('A') provides services for another ('B'), B is jointly liable with A in respect of liability of A under this Law arising during the course of his service.
- (3) Whether a relationship of service exists depends on the substance of the relationship between the two parties in all its aspects, rather than its form. It is not essential that there should be a contract of service between them.
- (4) A principal is jointly liable with his agent in respect of liability of the agent under this Law arising in the course of the agency, provided that the act or omission of the agent which gives rise to such liability is within the authority of the agent.
- (5) A person who knowingly and actively instigates another to act or omit to act in a manner which gives rise to liability under this Law, or who otherwise acts in concert with another in relation to such an act or omission, is jointly liable with the other.

16. Responsibility for childre

A parent or other person responsible for a child is jointly liable with the child in respect of the liability of the child under this Law if, at the time the child commits the act or omission that gives rise to liability under this Law, the parent or other person:

- (a) has control of, or is negligent in permitting the child to use, a dangerous thing which causes the loss suffered by the claimant;
- (b) is negligent in not exercising proper control and supervision of the child;

- (c) has previously authorised or subsequently ratifies the child's act; or
- (d) where the loss suffered by a third person arises from a perilous situation created by the act of the child, ought reasonably to have anticipated the situation in the circumstances.

CHAPTER 2 – NEGLIGENCE

17. Liability

- (1) A defendant is liable in negligence to a claimant if and to the extent:
 - (a) the defendant owes a duty of care to the claimant;
 - (b) the defendant breaches his duty of care to the claimant; and
 - (c) the defendant's acts or omissions in breach of his duty of care to the claimant cause loss to the claimant.
- (2) The defendant's liability provided in Article 17(1) shall be reduced by the extent to which the claimant's negligent acts or omissions contributed to his loss

18. Duty of care

- (1) Subject to Articles 18(2) and (3), a defendant owes a duty of care to a claimant where:
 - (a) it is reasonably foreseeable that the defendant's acts or omissions could cause loss to the claimant;
 - (b) the relationship between the defendant and the claimant is sufficiently proximate for a duty of care to exist; and
 - (c) it is fair, just and reasonable in the circumstances that the defendant should owe the claimant a duty of care.
- (2) A defendant who negligently creates a situation endangering life or property owes a duty of care to a claimant who suffers loss as a direct result of attempting rescue, where it is reasonably foreseeable that rescue could be attempted.
- (3) A person only owes a duty positively to act where he has assumed responsibility for the claimant, for certain property or for a third party causing loss to the claimant.

19. Public authorities

- (1) A public authority does not owe a duty of care pursuant to Articles 19(2) and 19(3) if it is subject to an immunity or exemption from liability in respect of that duty.
- (2) Subject to Article 19(1) and the rest of this Chapter, a public authority may owe a duty of care when it carries out a statutory or other legal duty.
- (3) Subject to Article 19(1) and the rest of this Chapter, when a public authority takes a decision or action pursuant to the exercise of a statutory or other legal discretion, a public authority may owe a duty of care in respect of that decision or action, but only if that decision or action is outside the ambit of that discretion.
- (4) To fall outside the ambit of a public authority's statutory discretion, the decision must be so unreasonable that there has been no real exercise of the discretion conferred on the public authority.
- (5) A public authority cannot owe a duty of care in respect of a failure to exercise a statutory or other legal discretion.

20. Economic loss

- (1) Where a claimant has suffered only pure economic loss as a result of the defendant's conduct, the defendant only owes a duty of care to the claimant if:
 - (a) the requirements of Article 17 are met;
 - (b) the defendant assumes a responsibility to the claimant;
 - (c) the claimant relies on the defendant; and
 - (d) it is reasonable for the claimant to rely on the defendant.
- (2) For the purposes of this Article 20, where a person makes a statement, he assumes a responsibility to persons to whom the statement is made or becomes available (such persons being 'recipients') if:
 - (a) he knows or ought to know that the statement will be communicated to the recipient, either specifically or as a member of an ascertainable class and that it is likely to be acted on by the recipient for the purpose for which the statement was made; and
 - (b) he intends, or the recipient reasonably believes that he intended, for the recipient so to act.

21. Standard of care

- (1) In order to establish a breach of a duty of care a claimant must show that a defendant failed to exercise reasonable care to avoid causing loss to the claimant, having regard to the probability, and the likely seriousness, of the loss.
- (2) 'Reasonable care' means the care which a person of ordinary care and skill, engaged in the type of activity in which the defendant was engaged, would have exercised.
- (3) A professional person exercises reasonable care if he shows the standard of care of an ordinary skilled person exercising and professing to have the special skill in question.
- (4) Where there are different views within a profession about what constitutes reasonable care, a professional shows reasonable care when he takes an approach endorsed or followed by a responsible body of professional opinion.

CHAPTER 3 – OCCUPIERS' LIABILITY

22. Liability

An occupier is liable to another person if:

- (a) he owes that person a duty of care;
- (b) he breaches his duty of care to that person; and
- (c) his acts or omissions in breach of his duty of care to that person cause loss to that person.

23. Occupier's duty of care to visitors

An occupier of premises owes a duty of care to a visitor.

24. Standard of care owed by an occupier to visitors

- (1) In performing the duty in Article 23, the occupier must take such care, as in all the circumstances of the case is reasonable, to see that the visitor will be reasonably safe in using the premises for the purposes for which he is invited or permitted by the occupier to be there.
- (2) For the purposes of ascertaining whether the occupier has performed his duty of care to a reasonable standard:
 - (a) the occupier must expect that children will be less careful than adults; and
 - (b) the occupier may expect that a person, in the exercise of his employment, profession or calling, will guard against any special risks ordinarily incident to it, if the occupier allows him to do so.
- (3) An occupier is not liable for a danger caused by the faulty work of an independent contractor employed by the occupier if he took reasonable steps in the circumstances to see that the contractor was competent and that his work was properly done.

25. Warnings and notices

A warning or notice is effective to exclude or restrict the occupier's liability under Article 22 if in all the circumstances the warning or notice was sufficient to enable the visitor to be reasonably safe.

26. Occupier's duty of care to non-visitors

- (1) Subject to Article 26(2), an occupier owes a duty to take reasonable care of a non-visitor.
- (2) An occupier owes a duty of care to a non-visitor if:
 - (a) he knows or has reasonable grounds to know that there is a danger on his premises;
 - (b) he knows or has reasonable grounds to know that the non-visitor is or may come within the vicinity of the danger; and
 - (c) the risk is one against which he ought reasonably to offer protection.
- (3) For the purposes of ascertaining whether the occupier has performed his duty of care to a reasonable standard the occupier must expect that children will be less careful than adults.

27. Standard of care owed by an occupier to non-visitors

- (1) Where an occupier of premises owes a duty to a non-visitor pursuant to Article 26, the duty is to take such care as is reasonable in all the circumstances of the case to see that he does not suffer personal injury on the premises by reason of the danger concerned.
- (2) The non-visitor must prove that the occupier has breached his duty of care.
- (3) A non-visitor can only recover for personal injury under this Chapter and cannot recover for any other loss.

28. Warnings and notices

An occupier may absolve himself of liability to a person who is not a visitor by taking steps, which are reasonable in all the circumstances, to give a warning of the danger.

CHAPTER 4 – MISREPRESENTATION

29. Misrepresentation defined

- (1) There is a misrepresentation if:
 - (a) there is an incorrect statement of fact, past or present, or a statement of opinion falling within Article 29(3);
 - (b) the representor or his agent makes the statement, or has notice that the statement is made; and
 - (c) the statement is made in order to induce, and does induce, a person to enter into a contract.
- (2) A statement of opinion or law unaccompanied by a representation of fact cannot be a representation.
- (3) A statement of opinion can only be a misrepresentation if it is accompanied by a further incorrect representation, whether express or implied, such that the representee (or his agent, acting in his capacity as such) has reasonable grounds for believing that the opinion is true.
- (4) A representation may be made in writing (electronically or otherwise), orally, by implication, by conduct, by means of a mark, trade name, get-up, image, slogan, an advertising method or otherwise.
- (5) Non-disclosure cannot amount to a representation, unless the non-disclosure is a breach of a specific duty to disclose.
- (6) If a representation becomes untrue before the contract is concluded, it becomes a misrepresentation, unless the representor or his agent informs the representee before the contract is concluded that the representation is no longer true.
- (7) A representation does not constitute a misrepresentation where the representor is doing no more than making a truthful statement of fact which he has a legitimate interest in making.

30. Liability

A person is liable for misrepresentation to a representee if:

- (a) he is the representor in relation to a misrepresentation;
- (b) the representee has entered into a contract with the representor after the misrepresentation has been made;
- (c) the misrepresentation influences the representee to enter into the contract with the representor or affects the terms upon which he agrees to enter into it; and
- (d) the representee suffers loss as a result of entering into the contract with the representor.

CHAPTER 5 – DECEIT

31. Deceit

- (1) A defendant is liable in deceit if:
 - (a) he makes a statement that is fraudulent;
 - (b) he intends that a person should rely on the fraudulent statement;
 - (c) the claimant relies upon the statement; and

- (d) the claimant suffers loss as a result of relying upon the statement.
- (2) A statement is fraudulent if its maker:
 - (a) knows that it is false;
 - (b) has no belief in its truth; or
 - (c) is reckless as to whether it is true or false.
- (3) It is no defence to an action under this Article that the claimant could have discovered the deceit if he had exercised reasonable care.

CHAPTER 6 – ECONOMIC TORTS

32. Inducing or procuring a breach of a legal right

A defendant is liable to a claimant if:

- (a) he knows that a third party owes a legal obligation to the claimant;
- (b) he intentionally induces that third party to breach that obligation; and
- (c) the claimant suffers loss as a result of the breach.

33. Intimidation

- (1) Subject to Article 35, a defendant is liable if:
 - (a) intentionally he delivers, directly or indirectly, a threat to a second person that he will commit an act which it is unlawful for him to commit against the second person;
 - (b) as a result of the threat the second person refrains from acting as he is entitled to act;
 - (c) as a result of thereby refraining, the second person or a third person suffers loss; and
 - (d) the defendant would be liable to the second or third person had he committed the unlawful act.
- (2) If the requirements of Article 33(1) are met, the second person or third person, or both, may bring an action against the defendant.

34. Unlawful interference with contract

- (1) Subject to Article 35, a defendant is liable to a second person if he uses unlawful means with the intention and effect of causing loss to that person under or in connection with a contract to which that person is party.
- (2) For the defendant to be liable, it is not necessary that the unlawful means be directed at the second person.
- (3) The means are only unlawful if any person would have a right of action as a result of the defendant using them.

35. Exception to Articles 33 and 34

A party may not bring an action under Articles 33 or 34 where he can bring an action under the Law of Contract.

36. Unlawful conspiracy

- (1) Where two or more persons conspire to do an unlawful act with the intention to cause loss to the claimant, and loss is caused to the claimant by the performance by at least one of them of the unlawful act, they are jointly liable to the claimant.
- (2) The act is only unlawful if the claimant would have a right of action as a result of any one person performing it.

37. Breach of confidence

- (1) Subject to Article 37(4), a person has a duty not to misuse specific information which he has received from another (a 'confidant'), directly or via an intermediary, and which can reasonably be regarded as confidential, where he knows or ought to know that the information is confidential.
- (2) If a person breaches his duty as defined in Article 37(1), he is liable to the confidant.
- (3) Unless non-confidentiality is otherwise expanded by agreement, information is not confidential if:
 - (a) it is in the public domain;
 - (b) it is trivial or useless; or
 - (c) it is in the public interest that the information should not be confidential.
- (4) Misuse of information includes, but is not limited to, its disclosure.
- (5) A person may disclose confidential information where:
 - (a) the confidant has consented, expressly or by implication, to its disclosure;
 - (b) its disclosure is required by law;
 - (c) its disclosure is required in the interests of the confidant;
 - (d) it is no longer confidential; or
 - (e) it is disclosed to a person who has a legitimate interest in receiving it.
- (6) It is no defence that the defendant did not know that he was misusing the confidential information.

38. Passing off

- (1) A defendant is liable to a claimant if:
 - (a) the claimant's goods, services or business have acquired a goodwill or reputation in the market and are known by some distinguishing feature;
 - (b) the defendant makes a misrepresentation which confuses or deceives persons in relation to the goods, services or business of the claimant, or is likely to do so; and
 - (c) the claimant suffers or is likely to suffer damage as a result of that belief.
- (2) It is not necessary for the purpose of this Article 38 that the persons confused or deceived should be aware of the claimant's identity, provided that they are accustomed to the claimant's goods, services or business.
- (3) It is no defence to an action under this Article that the defendant did not intend to cause the confusion or deception referred to in Article 38(1)(b).

39. Assisting passing off by others

A defendant is liable if he knowingly assists or facilitates passing off under Article 38 by another person.

40. Interpretation

- (1) Misrepresentation shall have the meaning and interpretation given to it in Article 29 save that a statement made without regard for its truthfulness which is in fact untrue and which induces the representee to enter into a contract, whether or not that was the intention of the representor, shall be a misrepresentation for purposes of this Chapter.
- (2) Confusion or deception under Article 38(1)(b) above include, but are not limited to, the reasonable belief that:
 - (a) the defendant's goods, services or business are the goods, services or business of the claimant, or vice versa;
 - (b) the claimant's goods or services of one class, quality, condition or state are of another class, quality, condition or state;
 - (c) the defendant's goods or services belong to a class of goods or services with a discrete reputation, when they do not; and
 - (d) goods are covered by the claimant's guarantee when they are not so covered.

CHAPTER 7 – WRONGFUL INTERFERENCE WITH PROPERTY

41. Wrongful interference with property

- (1) A defendant is liable to another person if, he wrongfully interferes with property in which the other person has an interest, such that the other person suffers loss.
- (2) A defendant interferes with property if:
 - (a) he takes, retains or parts with the property in which another person has an interest;
 - (b) he deals with or (in respect of property as to which he owes a duty of care) neglects the property so that it is destroyed or damaged;
 - (c) he deals with the property in a manner which constitutes a denial of title or possession of or enjoyment by the person with an interest in it.
- (3) A defendant does not interfere with property to which another person has an interest if he merely denies that person's interest in it.
- (4) A defendant's interference is wrongful if it occurs without the permission, express or implied, of the person with an interest in it.
- (5) It is no defence that the defendant did not know that the other person had an interest in the property.

42. Meaning of property

In this Chapter, property has the meaning given to it in the Personal Property Law, except that it does not include real property (as defined in the Personal Property Law), Money, things in action, Digital Assets and intellectual property.

43. Person with an interest in property

A person has an interest in property if he has any interest in it, present or future, direct or derivative, possessory or proprietary.

44. More than one interest in the property

- (1) A co-owner, or any other person with a limited interest in the property, may recover under this Chapter proportionately according to his interest.
- (2) A co-owner may bring an action under this Chapter against a fellow co-owner of the same property.

45. Provisions of Part 7 (Obligations relating to banking)

This Chapter is subject to the provisions of Part 7.

46. Rights of third parties

Where a defendant has been found liable to one claimant under this Part and subsequently a second claimant is found to have a superior right of interest in or to the property, which right or interest was the subject of the claim, the first claimant is liable to account to the second claimant.

CHAPTER 8 – TRESPASS TO LAND

47. Claimant defined

In this Chapter, and in Chapter 9, a claimant is a person who is in lawful possession of land or an interest in land.

48. Trespass defined

- (1) A person who intrudes on land possessed by a claimant without any lawful justification is a trespasser.
- (2) A trespasser is liable to a claimant.
- (3) Any reference in this Part to intrusion on land includes intrusion under it and over it, in the latter case to the extent that the space over the land is necessary for the full lawful use of the land.
- (4) It is no defence that the trespasser did not know that he was trespassing.

49. Lawful justification

A person who, but for this Article, would be a trespasser, is not a trespasser if:

- (a) he has a legal right to intrude on the land for the purpose of doing what he is doing;
- (b) the possessor of the land has permitted him to intrude on the land for the purpose of doing what he is doing; or
- (c) he intrudes on the land in order to recover property that belongs to him, having given reasonable notice and a reasonable explanation.

50. Defence of property

- (1) A person may use reasonable force to eject a trespasser from, or to prevent a trespasser from entering on to, land lawfully possessed by him, or may direct another person to the same end, provided that the trespasser has been requested to leave the land or not to attempt to enter on to the land, as the case may be.
- (2) If a claimant acts pursuant to Article 50(1), such action does not extinguish any right to damages that he may have.

CHAPTER 9 – NUISANCE**51. Nuisance defined**

- (1) A defendant is liable to a claimant to whom he causes a nuisance.
- (2) A defendant causes a nuisance to a claimant when:
 - (a) he interferes unreasonably, or permits an unreasonable interference, with the claimant's peaceful and quiet use or enjoyment of the land or of some right connected with the land;
 - (b) the claimant suffers substantial loss as a result of the defendant's interference; and
 - (c) it is reasonably foreseeable that the claimant will suffer substantial loss as a result of the defendant's interference.

52. Surrounding circumstances

- (1) When determining whether the interference is unreasonable, regard must be had to all the circumstances, including the area, the time, the regularity and duration of the conduct, the degree of interference and the defendant's motive in his conduct.
- (2) The claimant is assumed to be a person of ordinary sensitivity.

53. Substantial loss

- (1) The definition of loss in Schedule 1 does not apply to this Chapter.
- (2) A claimant suffers substantial loss if he suffers physical damage, economic loss or substantial inconvenience or discomfort.
- (3) A claimant cannot recover under this Chapter for personal injury.

54. Defences

In addition to the applicable defences in Chapter 9, a defendant is not liable under Article 51 if:

- (a) he could not have prevented the nuisance by the exercise of reasonable care;
- (b) a trespasser on his land causes the nuisance or the nuisance arises as a result of the defendant's reasonable response to a trespasser; or
- (c) the defendant does not know, and it is reasonable for him not to know, the facts giving rise to the nuisance or to know of the nuisance.

CHAPTER 10 – DEFENCES**55. Voluntary assumption of risk**

A defendant is not liable to a claimant under Chapters 2 and 3 of this Part if:

- (a) the claimant has knowingly subjected himself to the risk on which the claim is based; and
- (b) the claimant wishes to subject himself to that risk or agrees to subject himself to that risk.

56. Illegal conduct of claimant

A claimant may not claim under this Part for loss or injury in the course of, or as a consequence of, his unlawful conduct, or where it would be unlawful for him to obtain a remedy.

57. Prevention of crime and harm

It is a defence to any liability under this Part that the defendant was taking such action as was in his view both reasonable and necessary to prevent the commission of a crime or harm to persons or property.

58. Lawful authority

It is a defence to any liability under this Part that the defendant's conduct was authorised by law.

59. Exclusion of liability

Unless otherwise provided, a person can exclude or limit his liability arising under this Part, subject to the Implied Terms in Contracts and Unfair Terms Law.

PART 4: OBLIGATIONS RELATING TO INSURANCE

60. Application and scope

- (1) This Part applies to persons in relation to contracts of insurance.
- (2) For the purpose of this Part, a contract of insurance is a contract under which a party (the 'insurer') undertakes to indemnify, or to provide a corresponding benefit to or for the benefit of, a party having an insurable interest (the 'insured') on the occurrence of a specified event.
- (3) The Board of Directors of the DIFCA, with the consent of the DFSA, may make Regulations as to the scope of the definition in Article 60(2). Such Regulations may, without limitation:
 - (a) limit, restrict or provide Guidance as to the definition of an "insurable interest";
 - (b) limit, restrict or provide Guidance as to specified events eligible for protection under a contract of insurance;
 - (c) limit, restrict or provide Guidance as to circumstances under which a third party may be entitled to claim under a contract of insurance; and
 - (d) make provision as to the enforceability of contracts falling outside the scope of the definition.

61. Duty of the insured to disclose facts

- (1) An insured under a contract of insurance is under a duty to the insurer to disclose to the insurer every fact within his knowledge which would influence the judgement of a prudent insurer in determining the terms and conditions of the contract or in determining whether to enter into the contract of insurance.
- (2) The duty in Article 61(1) continues for the life of the contract of insurance.
- (3) For the purpose of Article 61(1):
 - (a) an insured is deemed to have knowledge of matters of which his agent has knowledge if:
 - (i) the insured relies or has relied upon the agent in relation to information concerning the subject matter of the insurance; or
 - (ii) the agent is in a predominant position in relation to the principal in all the circumstances relating to the contract of insurance; and
 - (b) if an agent enters into the insurance contract on behalf of the insured, the insured is also under a duty to ensure disclosure of every fact within the knowledge of the agent which would be disclosable under Article 61(1) if known by the insured.

62. Duty of utmost good faith of the insurer and of the insured

- (1) All parties to a contract of insurance are under a duty to act honestly and with the utmost good faith in relation to the contract of insurance.
- (2) The duty in Article 62(1) continues for the life of the contract of insurance.
- (3) For the purpose of Article 62(1), the duty to act with the utmost good faith is satisfied where a party:
 - (a) discloses every fact relevant to the contract of insurance;
 - (b) makes no misrepresentation relating to the contract of insurance; and

(c) intends to carry out, and carries out, his obligations with the utmost good faith.

63. Consequence of breach of duty

- (1) Subject to Article 63(2), a contract of insurance in respect of which a party has breached a duty under this Part may be avoided by the other party. Nothing in this Article limits the power of the Court to grant any remedy in relation to a dispute relating to a contract of insurance.
- (2) Article 63(1) applies only if the breach of duty is material to the claim.

64. Regulations

The Board of Directors of the DIFCA, with the consent of the DFSA, may make Regulations providing for the duties of the insured and of the insurer under Articles 61 and 62.

PART 5: OBLIGATIONS RELATING TO BAILMENT

CHAPTER 1 – APPLICATION AND DEFINITIONS

65. Application

- (1) This Part applies to any bailment of property possessed or owned by a person within the DIFC, subject to Article 65(2).
- (2) This Part does not apply in respect of securities, Negotiable Instruments, or Digital Assets.

66. Bailment defined

- (1) A bailment arises whenever a person (the bailor) lawfully in possession, or entitled to possession, of property passes possession of the property to another person (the bailee), subject to this Article 66.
- (2) Possession of property may pass to a bailee:
 - (a) by physical transfer of the property; or
 - (b) by delivery of any property (including a document of title) entitling or enabling possession on the part of the recipient.
- (3) Possession by an agent, acting within his authority, of property owned by his principal is not a bailment. The passing by an agent of possession of property belonging to his principal, when done within his authority, is a bailment.
- (4) A bailment may be:
 - (a) contractual; or
 - (b) non-contractual.
- (5) A non-contractual bailment may be voluntary or involuntary. A voluntary bailment occurs where the bailor and the bailee intend that possession should pass to the bailee. All other bailments are involuntary bailments.
- (6) A non-contractual bailment may be:
 - (a) for the benefit of the bailor; or
 - (b) for the benefit of the bailee.
- (7) An involuntary bailment must be presumed to be for the benefit of the bailor unless otherwise evidenced.

67. Sub-bailment defined

A sub-bailment is the transfer of possession of property from a person (other than the owner) entitled to possession of the property (the sub-bailor) to a person other than the owner of the property (the sub-bailee). Bailment by an agent on behalf of his principal pursuant to Article 66(3) is not a sub-bailment.

CHAPTER 2 – DUTIES OF BAILOR AND BAILEE

68. Application of this Chapter

Other than Articles 73 and 74, this Chapter does not apply to contracts of hire.

69. Duty of the bailor to disclose information

- (1) A bailor under a voluntary bailment is under a duty to disclose to the bailee any information as to the property bailed of which the bailee would reasonably expect notice and the absence of which could reasonably cause loss to the bailee.
- (2) A bailor under an involuntary bailment is under a duty to disclose to the bailee, as soon as reasonably practicable after becoming aware of the bailment and the identity of the bailee, of any information as to the property bailed of which the bailee would reasonably expect notice and the absence of which could reasonably cause loss to the bailee.
- (3) A failure to comply with an obligation under Article 69(1) is a breach of duty of care owed by the bailor to the bailee under Chapter 2 of Part 3.

70. Expenses

- (1) In respect of a voluntary bailment:
 - (a) unless there is evidence of contrary intention on the part of the bailee, the bailor is under a duty to pay the reasonable expenses of the bailee incurred in undertaking bailment of the property if the purpose of the bailment is for custody or otherwise for the benefit of the bailor; and
 - (b) in all other cases, each of the bailor and bailee must bear its own costs.
- (2) In respect of an involuntary bailment, the bailor is under a duty to pay the reasonable expenses of the bailee incurred in undertaking bailment of the property.

71. Duty of the bailee to take care of property bailed

- (1) A bailee must take such care of the property bailed as is reasonable in all the circumstances.
- (2) A bailee under a contractual bailment may vary the standard of care set out in Article 71(1) in the contract of bailment, subject to the Implied Terms in Contracts and Unfair Terms Law.
- (3) A bailee under a voluntary bailment may vary the standard of care set out in Article 71(1) by notice to the bailor, subject to the Implied Terms in Contracts and Unfair Terms Law. Any such notice may only take effect from the time the bailor becomes aware, or ought reasonably to become aware, of its contents.
- (4) A bailee who complies with his obligations under this Article 71 is not responsible for the loss, destruction or deterioration of the property bailed, subject to any contrary agreement.
- (5) A failure by a bailee to comply with an obligation under Article 71(1) is a breach of a duty of care owed by the bailee to the bailor under Chapter 2 (Negligence) of Part 3.
- (6) In determining whether a bailee has complied with its obligations under this Article 71, all of the circumstances of the bailment must be taken into account. In particular, regard should be taken of the guidance set out in Schedule 2.

72. Duty of the bailee not to use property bailed

- (1) A bailee must not use the property bailed except:
 - (a) as permitted by the bailor; or
 - (b) to the extent reasonably necessary for the purpose of the bailment.
- (2) In respect of an involuntary bailment, a bailee may use the property bailed to the extent reasonably necessary to prevent the bailee suffering loss as a result of or in connection with the bailment.

- (3) Use by the bailee of the property bailed other than in accordance with Article 72(1) or 72(2) (as the case may be) constitutes wrongful interference with property in accordance with Chapter 6 of Part 3.

73. Bailee's duty not to act in a manner inconsistent with owner's title

- (1) A bailee is under a duty not to act, or omit to act:
 - (a) in a manner which is inconsistent with the title of the owner of the property; or
 - (b) in a manner which is inconsistent with the rights of the bailor as notified to the bailee (if the bailor is not the owner of the property),

except as permitted by the bailor. For the purposes of this Article 73(1), a bailee may assume that a bailor is the owner of the property if not notified otherwise by the bailor, and accordingly has no duty under Article 73(1)(b) unless so notified.

- (2) A breach by the bailee of Article 73(1) constitutes wrongful interference with property in accordance with Chapter 6 of Part 3.
- (3) Where a bailee breaches its duty under Article 73(1), the bailor may terminate the bailment at any time.

74. Duty of the bailee to return property

- (1) In respect of a non-contractual bailment, the bailor is entitled to return of the property bailed on reasonable notice to the bailee at any time.
- (2) A failure by the bailee to return the property bailed in accordance with Article 74(1) constitutes wrongful interference with property in accordance with Chapter 6 of Part 3.

75. Joint bailments

- (1) Where property belonging to co-owners is bailed to a bailee, the bailee is obliged to return the property only on the instructions of all co-owners, unless the co-owners otherwise notify the bailee.
- (2) Where property is bailed to more than one person acting as bailee, each bailee is jointly liable in respect of any breach of duty under this Part relating to the bailment.

76. Sub-bailments

- (1) Where a bailment is a sub-bailment, the duties of the sub-bailee under Article 71, 72 and 73 are owed concurrently to the sub-bailor and to the owner of the property.
- (2) A sub-bailment does not alter the rights and obligations of the bailor and bailee under the original bailment.

PART 6: NEGOTIABLE INSTRUMENTS

CHAPTER 1 – DEFINITIONS

77. Negotiable instrument defined

- (1) A Negotiable Instrument is any instrument or other writing (in tangible form or in the form of an Electronic Trade Document) that embodies an unconditional right to the payment of a fixed monetary obligation, and is of a type that in the ordinary course of business is transferred by delivery with any necessary endorsement or assignment, subject to this Law.
- (2) Subject to Article 77(1), each of the following is a Negotiable Instrument:
 - (a) a bill of exchange within the meaning of Article 78 of this Law;
 - (b) a promissory note within the meaning of Article 80 of this Law.
- (3) A Monetary Obligation may be fixed even though it is required to be paid with interest, in instalments, or according to a rate of exchange.
- (4) The Board of Directors of the DIFCA, with the consent of the DFSA, may by Regulations:
 - (a) determine that other instruments are Negotiable Instruments under this Part; and
 - (b) apply, disapply or modify the provisions of this Part in relation to such instrument.

78. Bill of exchange defined

- (1) A bill is an unconditional order in writing (in tangible form or in the form of an Electronic Trade Document), addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or future time a sum of Money to or to the order of a specified person, or to bearer.
- (2) An instrument which does not comply with these conditions, or which orders anything to be done in addition to the payment of Money, is not a bill.
- (3) An order to pay out of a particular fund is not unconditional within the meaning of this Article 78.
- (4) A bill is not invalid by reason:
 - (a) that it is not dated; or
 - (b) that it does not specify the place where it is drawn or the place where it is payable.

79. Cheque defined

A cheque is a bill of exchange drawn on a banker payable on demand, subject to Article 135.

80. Promissory note defined

- (1) A promissory note is an unconditional promise in writing (in tangible form or in the form of an Electronic Trade Document), made by one person to another signed by the maker, undertaking to pay, on demand or at a fixed or determinable future time, a sum certain in Money, to, or to the order of, a specified person or to bearer.
- (2) An instrument in the form of a promissory note payable to the order of the maker is not a promissory note within the meaning of this Article unless and until it is endorsed by the maker.

- (3) The Board of Directors of the DIFCA may by Regulations make provision for the application of this Part to Negotiable Instruments in non-tangible form. Such Regulations may, without limitation, provide for:
 - (a) minimum requirements (including as to security) for the creation and operation of systems for the creation of non-tangible instruments; and
 - (b) the recognition of signatures in relation to, and other writing on, instruments held in non-tangible form; and
 - (c) requirements relating to how non-tangible instruments may be possessed and transferred.

CHAPTER 2 – BILLS OF EXCHANGE

81. Effect where different parties to bill are the same person

- (1) A bill may be drawn payable to, or to the order of, the drawer; or it may be drawn payable to, or to the order of, the drawee.
- (2) Where in a bill the drawer and the drawee are the same person, or where the drawee does not exist, the holder may treat the instrument either as a bill or as a promissory note.

82. Address to drawee

- (1) The drawee must be named or otherwise indicated in a bill with reasonable certainty.
- (2) A bill may be addressed to two or more drawees, but an order addressed to two drawees in the alternative or to two or more drawees in succession is not a bill.

83. Certainty required as to payee

- (1) Where a bill is not payable to bearer, the payee must be named or otherwise indicated. A payee may be identified in any way, including by name, identifying number or account number.
- (2) A bill may be made payable to two or more payees jointly, or it may be made payable in the alternative to one of two, or one or some of several payees. A bill may also be made payable to the holder of an office for the time being.
- (3) Where the payee is a fictitious or non-existent person the bill may be treated as payable to bearer.

84. What bills are negotiable

- (1) When a bill contains words prohibiting transfer, or indicating an intention that it should not be transferable, it is valid as between the parties, but is not negotiable and accordingly the provisions of this Part that relate to negotiation and the rights of holders do not apply to such a bill.
- (2) A negotiable bill may be payable either to order or to bearer.
- (3) A bill is payable to bearer which is expressed to be so payable, or on which the only or last endorsement is an endorsement in blank.
- (4) A bill is payable to order which is expressed to be so payable, or which is expressed to be payable to a particular person.
- (5) Where a bill, either originally or by endorsement, is expressed to be payable to the order of a specified person, and not to him or his order, it is nevertheless payable to him or his order at his option.

85. Bill payable on demand

- (1) A bill is payable on demand if:
 - (a) it is expressed to be payable on demand, or at sight, or on presentation; or
 - (b) it does not provide a time for payment.
- (2) Where a bill is accepted or endorsed when it is overdue, it is, as regards the acceptor who accepts it, or any endorser who endorses it, deemed a bill payable on demand.

86. Bill payable at a future time

A bill is payable at a future time if it is expressed to be payable:

- (a) at a fixed period after date or sight; or
- (b) on or at a fixed period after the occurrence of a specified event, provided that the event is certain to happen.

87. Omission of date in bill payable after date

- (1) Where a bill expressed to be payable at a fixed period after a date is issued undated, or where the acceptance of a bill payable at a fixed period after sight is undated, any holder may insert the true date of issue or acceptance, and the bill is payable accordingly.
- (2) Where by mistake a wrong date is inserted, a subsequent holder in due course is entitled to enforce the bill as if the date so inserted were the true date.

88. Ante-dating and post-dating

- (1) Where a bill or an acceptance or any endorsement on a bill is dated, the date is presumed to be the true date of the drawing, acceptance, or endorsement, as the case may be.
- (2) A bill is not invalid by reason only that it is ante-dated or post-dated.

89. Optional terms by drawer or endorser

The drawer of a bill, and any endorser, may insert an express term:

- (a) negating or limiting his own liability to the holder; or
- (b) waiving as regards himself some or all of the holder's duties.

90. Acceptance

- (1) Acceptance of a bill is the manifestation by the drawee of his agreement to the order of the drawer.
- (2) An acceptance is invalid unless it is in writing (which may be a signature alone) on the bill and signed by or on behalf of the drawee.
- (3) A bill may be accepted:
 - (a) before it has been signed by the drawer, or while otherwise incomplete; or
 - (b) when it is overdue, or after it has been dishonoured by a previous refusal to accept, or by non-payment.

91. Incomplete instruments

- (1) Where a person delivers a signature in order that it may be converted into a bill, there is a presumption that he authorises the recipient to complete a bill for any amount using for that purpose the signature of the drawer, or the acceptor, or an endorser within a reasonable time and within the authority conferred on the person completing it.
- (2) When a bill lacks any material particular, there is a presumption that the person in possession of it has authority to complete the bill in any way he thinks fit within a reasonable time and within the authority conferred on the person completing it.
- (3) If any instrument completed pursuant to Article 91(1) or (2) is negotiated to a holder in due course, he may enforce it as if it had been completed in accordance with the relevant Article.

92. Delivery

- (1) Subject to Article 92(2), a bill is not effective, and the rights and obligations of each party to the bill are incomplete and revocable, until the instrument is delivered.
- (2) Where an acceptance is written on a bill, and the drawee gives notice to or according to the directions of the person entitled to the bill that he has accepted it, the acceptance then becomes complete and irrevocable.
- (3) As between the parties at the time of delivery, and as regards any other person other than a holder in due course, the delivery must be made either by or under the authority of the party drawing, accepting, or endorsing, as the case may be.
- (4) In favour of a holder in due course, a valid delivery of the bill by all parties prior to him is conclusively presumed.
- (5) Where a bill is no longer in the possession of a party who has signed it as drawer, acceptor, or endorser, a valid and unconditional delivery by him is presumed.

93. Capacity of parties

Capacity to incur liability as a party to a bill is co-extensive with capacity to contract.

94. Signature essential to liability

No person is liable as drawer, endorser or acceptor of a bill who has not signed it as such.

95. Person signing as agent

Where a person signs a bill as drawer, endorser, or acceptor, and adds words to his signature, indicating that he signs for or on behalf of a principal, he is not personally liable on the bill.

96. Holder in due course

- (1) A holder in due course is a holder who has received a bill by negotiation:
 - (a) before it has become overdue;
 - (b) without notice that it has been previously dishonoured; and
 - (c) in good faith and without notice of any defect in the title of the person who negotiated it.
- (2) The title of a person who negotiates a bill is defective within the meaning of this Part when he obtained the bill, or the acceptance of the bill, by fraud, or other unlawful means, or when he negotiates it under circumstances amounting to fraud.

- (3) Every holder of a bill is presumed to be a holder in due course

97. Negotiation of bill

- (1) A bill is negotiated when it is transferred from one person to another in such a manner as to constitute the transferee the holder of the bill.
- (2) A bill payable to bearer is negotiated by delivery.
- (3) A bill payable to order is negotiated by:
 - (a) the endorsement of the holder; and
 - (b) delivery.
- (4) Where the holder of a bill payable to his order transfers it without endorsing it, the transfer gives the transferee:
 - (a) such title as the transferor had in the bill; and
 - (b) the right to have the endorsement of the transferor.

98. Requirements for a valid endorsement

- (1) In order to operate as a negotiation an endorsement must:
 - (a) be written on the bill and be signed by the endorser; and
 - (b) be an endorsement of the entire bill.
- (2) Where the payee or endorsee is wrongly designated in a bill payable to order, or his name is misspelt, he may endorse the bill by adding his proper signature.
- (3) Where there are two or more endorsements on a bill, each endorsement is presumed to have been made in the order in which it appears on the bill, unless the contrary is proved.
- (4) An endorsement may be made in blank or special. It may also contain terms making it restrictive.

99. Conditional endorsement

Where a bill purports to be endorsed conditionally the condition may be disregarded by the payer, and payment to the endorsee is valid whether the condition has been fulfilled or not.

100. Endorsement in blank and special endorsement

- (1) An endorsement in blank specifies no endorsee, and a bill so endorsed becomes payable to bearer.
- (2) A special endorsement specifies the person to whom, or to whose order, the bill is to be payable.
- (3) The provisions of this Part relating to a payee apply to an endorsee under a special endorsement.
- (4) When a bill has been endorsed in blank, any holder may convert the blank endorsement into a special endorsement by writing above the endorser's signature a direction to pay the bill to or to the order of himself or some other person.

101. Restrictive endorsement

- (1) An endorsement is restrictive which prohibits the further negotiation of the bill or which expresses that it is a mere authority to deal with the bill and not a transfer of the ownership of it.

- (2) A restrictive endorsement gives the endorsee the right to receive payment of the bill and to sue any party to the bill that his endorser could have sued, but gives him no power to transfer his rights as endorsee unless it expressly authorises him to do so.
- (3) Where a restrictive endorsement authorises further transfer, all subsequent endorsees take the bill with the same rights and subject to the same liabilities as the first endorsee under the restrictive endorsement.

102. Negotiation of overdue or dishonoured bill

- (1) A bill is negotiable until it has been
 - (a) restrictively endorsed; or
 - (b) discharged by payment or otherwise.
- (2) An overdue bill can only be negotiated subject to any defect of title affecting it at its maturity, and no person who takes it thereafter can acquire or give a better title than that which the person from whom he took it had.
- (3) A bill is overdue:
 - (a) if demand for payment has been duly made, but payment has not yet been made;
 - (b) in the case of a bill payable at a future time, after such time; or
 - (c) in the case of a bill payable on demand, the bill appears on its face to have been in circulation for an unreasonable period of time subject to Article 112.
- (4) Every negotiation is presumed to have been effected before the bill was overdue except where an endorsement bears a date later than the maturity of the bill.
- (5) Where a bill which is not overdue has been dishonoured any person who receives it with notice of the dishonour takes it subject to any defect of title attaching to it at the time of dishonour, but nothing in Article 102(4) affects the rights of a holder in due course.

103. Negotiation of bill to party already liable thereon

Where a bill is negotiated back to:

- (a) the drawer;
- (b) a prior endorser; or
- (c) the acceptor,

such party may, subject to the provisions of this Part, re-issue and further negotiate the bill, but may not enforce payment of the bill against any party to the bill to whom he was previously liable.

104. Rights of the holder

The rights and powers of the holder of a bill are as follows:

- (a) he may sue on the bill in his own name;
- (b) where he is a holder in due course, he holds the bill free from any defect of title of prior parties, as well as from personal defences available to prior parties among themselves, and may enforce payment against all parties liable on the bill; and
- (c) where his title is defective:

- (i) if he negotiates the bill to a holder in due course, that holder obtains a good and complete title to the bill; and
- (ii) if he obtains payment of the bill the person who pays him in due course obtains a valid discharge for the bill.

105. When presentation for acceptance is necessary

- (1) Where a bill is payable after sight, presentation for acceptance is necessary in order to fix the maturity of the instrument.
- (2) Where a bill expressly stipulates that it must be presented for acceptance, or where a bill is drawn payable elsewhere than at the place of business of the drawee, it must be presented for acceptance before it can be presented for payment. Otherwise presentation for acceptance is not necessary in order to render any party liable in relation to the bill.
- (3) Where the holder of a bill, drawn payable elsewhere than at the place of business of the drawee, has not time, with the exercise of reasonable diligence, to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused, and does not discharge the drawer and endorsers.

106. Time for presenting bill payable after sight

- (1) Subject to the provisions of this Part, when a bill payable after sight is negotiated, the holder must either present it for acceptance or negotiate it within a reasonable time.
- (2) If a holder fails to comply with his obligation under Article 106(1), the drawer and all endorsers prior to that holder are discharged from any obligation in respect of the bill under this Part.
- (3) In determining what is a reasonable time within the meaning of this Article, regard must be had to the nature of the bill, the custom with respect to similar bills, and the facts of the particular case.

107. Presentation for acceptance, and excuses for non-presentation

- (1) A bill is duly presented for acceptance if the presentation is made by or on behalf of the holder to the drawee (or, if there is more than one drawee, to all), or to some person authorised to accept or refuse acceptance on his behalf, at a reasonable hour on a business day and before the bill is overdue.
- (2) Presentation in accordance with these rules is excused, and a bill may be treated as dishonoured by non-acceptance, where
 - (a) the drawee is insolvent or fictitious;
 - (b) after the exercise of reasonable efforts, presentation cannot be effected; or
 - (c) acceptance has been refused on some other ground.

108. Non-acceptance

When a bill is duly presented for acceptance and is not accepted within a reasonable time, the person presenting it must treat it as dishonoured by non-acceptance. If he does not, the holder loses his right of recourse against the drawer and endorsers in respect of the bill.

109. Dishonour by non-acceptance and its consequences

- (1) A bill is dishonoured by non-acceptance:
 - (a) when it is duly presented for acceptance, and such an acceptance as is prescribed by this Part is refused or cannot be obtained; or

- (b) when presentation for acceptance is excused and the bill is not accepted.
- (2) Subject to the provisions of this Part, when a bill is dishonoured by non-acceptance, an immediate right of recourse against the drawer and endorsers accrues to the holder, and no presentation for payment is necessary.

110. Duties as to qualified acceptances

- (1) The holder of a bill may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance may treat the bill as dishonoured by non-acceptance.
- (2) Where a qualified acceptance is taken, and the drawer or an endorser has not expressly or impliedly authorised the holder to take a qualified acceptance, or does not subsequently assent thereto, such drawer or endorser is discharged from his liability on the bill.
- (3) When the drawer or endorser of a bill receives notice of a qualified acceptance, and does not within a reasonable time express his dissent to the holder, he is conclusively presumed to have assented to the qualified acceptance.

111. Presentation for payment

- (1) Subject to the provisions of this Part a bill must be duly presented for payment. If it is not so presented the drawer and endorsers are discharged from their obligations under this Part in respect of the bill.
- (2) A bill is duly presented for payment if:
 - (a) in the case of a bill which is not payable on demand, presentation is made on the day it falls due; or
 - (b) in the case of a bill which is payable on demand, presentation is made within a reasonable time; and
 - (c) presentation is made by the holder or his agent at a reasonable hour on a business day, at the proper place as hereinafter defined, to the person designated by the bill as payer (and if more than one person is so designated, to each of them), or his agent.
- (3) For the purpose of Article 111(2)(b) the proper place is:
 - (a) the place of payment as specified in the bill, if any;
 - (b) where no place of payment is specified, the address of the drawee or acceptor given in the bill, if any; and
 - (c) where no place of payment is specified and no address given, the drawee's or acceptor's place of business.
- (4) In determining what is a reasonable time for the purpose of Article 112(2)(b), regard must be had to the nature of the bill, the custom with regard to similar bills, and the facts of the particular case.

112. Late presentation for payment and exceptions from presentation

- (1) Delay in making presentation for payment is excused if and to the extent that the delay is caused by circumstances beyond the control of the holder, and not due to his default, misconduct, or negligence.
- (2) Presentation for payment under Article 111 is not required:
 - (a) where, after the exercise of reasonable efforts, presentation cannot be carried out;

- (b) where the drawee is a fictitious person;
- (c) as regards the drawer where the drawee or acceptor is not bound as between himself and the drawer, to accept or pay the bill, and the drawer has no reason to believe that the bill would be paid if presented;
- (d) where the drawee or acceptor waives presentation.

113. Dishonour by non-payment

- (1) A bill is dishonoured by non-payment:
 - (a) when it is duly presented for payment and payment is refused or cannot be obtained; or
 - (b) when presentation is excused and the bill is overdue and unpaid.
- (2) Subject to the provisions of this Part, when a bill is dishonoured by non-payment, an immediate right of recourse against the drawer and endorsers accrues to the holder.

114. Notice of dishonour and effect of non-notice

- (1) Subject to the provisions of this Part, when a bill has been dishonoured by non-acceptance or by non-payment, notice of dishonour must be given to the drawer and each endorser, and any drawer or endorser to whom such notice is not given is discharged from his obligations under this Part with respect to the bill.
- (2) Where a bill is dishonoured by non-acceptance, and notice of dishonour is not given, the rights of a holder in due course, subsequent to the omission, are not prejudiced by the omission.
- (3) Where a bill is dishonoured by non-acceptance, and due notice of dishonour is given, it is not necessary to give notice of a subsequent dishonour by non-payment unless the bill is accepted in the meantime.

115. Notice of dishonour

- (1) In order to be valid a notice of dishonour must be served within a reasonable time by or on behalf of the holder, or by or on behalf of an endorser who, at the time of giving it, is himself liable on the bill, to the drawer or an endorser (provided that if there is more than one drawer or (in respect of an endorsement) endorsers, to each of them) or his agent, identifying the bill and the fact that it has been dishonoured.
- (2) Where a notice is given by or on behalf of the holder, it is deemed made by the holder and all subsequent holders and all prior endorsers who have a right of recourse against the party to whom it is given.
- (3) Where notice is given by or on behalf of an endorser entitled to give notice under this Article, it is deemed made by the holder and all endorsers subsequent to the party to whom notice is given.
- (4) The return of a dishonoured bill to the drawer or an endorser is a notice of dishonour for the purpose of this Article 115.
- (5) Where a party to a bill receives a notice of dishonour, he has the same period of time for giving notice to antecedent parties that the holder has after the dishonour.

116. Late notice and exceptions from notice

- (1) Delay in giving notice of dishonour is excused if and to the extent that the delay is caused by circumstances beyond the control of the party required to give notice, and not due to his default, misconduct, or negligence.

- (2) Notice of dishonour under Article 114 is not required:
 - (a) when, after the exercise of reasonable diligence, notice as required by this Part cannot be given to or does not reach the drawer or endorser;
 - (b) if the party to whom the notice would otherwise be provided waives the requirement;
 - (c) as regards the drawer in the following cases:
 - (i) where the drawer and drawee are the same person;
 - (ii) where the drawee is non-existent;
 - (iii) where the drawer is the person to whom the bill is presented for payment;
 - (iv) where the drawee or acceptor is as between himself and the drawer under no obligation to accept or pay the bill; or
 - (v) where the drawer has countermanded payment; and
 - (d) as regards the endorser in the following cases:
 - (i) where the drawee is non-existent, and the endorser was aware of the fact at the time he endorsed the bill; or
 - (ii) where the endorser is the person to whom the bill is presented for payment.

117. Duties of holder as regards drawee or acceptor

- (1) When a bill is accepted, presentation for payment is generally not necessary in order to render the acceptor liable.
- (2) When by the terms of a qualified acceptance presentation for payment is required, the acceptor, in the absence of an express term to that effect, is not discharged by failure to present the bill for payment on the day that it matures.
- (3) In order to render the acceptor of a bill liable it is not necessary to give him a notice of dishonour.
- (4) Where the holder of a bill presents it for payment, he must show the bill to the person from whom he demands payment, and when a bill is paid the holder must deliver it to the party paying it.

118. Liability of acceptor

The acceptor of a bill, by accepting it:

- (a) promises that he will pay it according to the terms of his acceptance:
- (b) is precluded from denying to a holder in due course without actual notice to the contrary:
 - (i) the existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the bill;
 - (ii) in the case of a bill payable to drawer's order, the then capacity of the drawer to endorse, but not the genuineness or validity of his endorsement;
 - (iii) in the case of a bill payable to the order of a third person, the existence of the payee and his then capacity to endorse, but not the genuineness or validity of his endorsement.

119. Liability of drawer or endorser

- (1) The drawer of a bill, by drawing it:
 - (a) promises that on due presentation it will be accepted and paid according to its terms, and that if it is dishonoured he will compensate the holder or any endorser who is compelled to pay it, provided that proceedings are taken in accordance with this Part;
 - (b) is precluded from denying to a holder in due course the existence of the payee and his then capacity to endorse.
- (2) The endorser of a bill, by endorsing it:
 - (a) promises that on due presentation it will be accepted and paid according to its terms, and that if it is dishonoured he will compensate the holder or a subsequent endorser who is compelled to pay it, provided that proceedings are taken in accordance with this Part;
 - (b) is precluded from denying to a holder in due course the genuineness and regularity in all respects of the drawer's signature and all previous endorsements; and
 - (c) is precluded from denying to his immediate or a subsequent endorsee that the bill was at the time of his endorsement a valid and subsisting bill, and that he had then a good title thereto.

120. Stranger signing bill liable as endorser

Where a person signs a bill otherwise than as drawer or acceptor, he thereby incurs the liabilities of an endorser to a holder in due course.

121. Measure of damages against parties to dishonoured bills

Where a bill is dishonoured, the holder may recover from any party liable on the bill, and the drawer who has been compelled to pay the bill may recover from the acceptor, and an endorser who has been compelled to pay the bill may recover from the acceptor or from the drawer, or from a prior endorser:

- (a) the amount of the bill; and
- (b) interest thereon from the time of presentation for payment if the bill is payable on demand, and from the maturity of the bill in any other case.

122. Transferor by delivery and transferee

- (1) Where the holder of a bill payable to bearer negotiates it by delivery without endorsing it he is called a 'transferor by delivery'.
- (2) A transferor by delivery is not liable on the instrument.
- (3) A transferor by delivery who negotiates a bill warrants to a transferee that the bill is what it purports to be, that he has a right to transfer it, and that at the time of transfer he is not aware of any fact which diminishes its value.

123. Payment in due course

- (1) A bill is discharged by payment in due course by or on behalf of the drawee or acceptor.
- (2) Subject to Articles 125, 126, and 127, when a bill is paid by the drawer or an endorser it is not discharged; but
 - (a) where a bill payable to, or to the order of, a third party is paid by the drawer, the drawer may enforce payment thereof against the acceptor, but may not re-issue the bill;

- (b) where a bill is paid by an endorser, or where a bill payable to drawer's order is paid by the drawer, the party paying it has his rights under the bill as regards the acceptor or antecedent parties, and may strike out his own subsequent endorsements and again negotiate the bill.

124. Banker paying demand draft whereon endorsement is forged

When a bill payable to order on demand is drawn on a banker, who pays the bill in good faith and in the ordinary course of business, it is presumed in favour of the bank that

- (a) the endorsement of the payee or any subsequent endorsement was made by or under the authority of the person whose endorsement it purports to be; and
- (b) the banker paid the bill in due course, even if such endorsement has been forged or made without authority.

125. Acceptor the holder at maturity

When the acceptor of a bill is or becomes the holder of it at or after its maturity, in his own right, the bill is discharged.

126. Express waiver

- (1) When the holder of a bill at or after its maturity absolutely and unconditionally renounces his rights against the acceptor the bill is discharged.
- (2) The liabilities of any party to a bill may be renounced by the holder before, at, or after its maturity; but nothing in this Article affects the rights of a holder in due course without actual notice of the renunciation.

127. Cancellation

- (1) Where a bill is intentionally cancelled by the holder or his agent, and the cancellation is apparent thereon, the bill is discharged.
- (2) Any party liable on a bill may be discharged by the intentional cancellation of his signature by the holder or his agent. In such case any endorser who would have had a right of recourse against the party whose signature is cancelled is also discharged.
- (3) A cancellation made unintentionally, or under a mistake, or without the authority of the holder is inoperative; but where a bill or any signature thereon appears to have been cancelled the burden of proof lies on the party who alleges that the cancellation was made unintentionally, or under a mistake, or without authority.

128. Alteration of bill

- (1) Where a bill or acceptance is materially altered without the assent of all parties liable on the bill, the bill may be avoided by a party unless he himself made, authorised, or assented to the alteration, and subsequent endorsers, subject to Article 128(2).
- (2) Where a bill has been materially altered, but the alteration is not apparent, and the bill is in the hands of a holder in due course without knowledge of the material alterations, such holder may avail himself of the bill as if it had not been altered, and may enforce payment of it according to its terms.
- (3) The following alterations are material: any alteration of:
 - (a) the date;
 - (b) the sum payable;

- (c) the time of payment;
- (d) the place of payment; and
- (e) where a bill has been accepted generally, the addition of a place of payment without the acceptor's consent.

129. Holder's right to duplicate of lost bill

- (1) Where a bill has been lost before it is overdue the person who was the holder of it may apply to the drawer to give him another bill of the same tenor, giving security to the drawer if required to indemnify him against all persons if the bill alleged to have been lost is found again.
- (2) If the drawer on request as aforesaid refuses to give such duplicate bill he may be compelled to do so.

CHAPTER 3 – CHEQUES

130. Application of Chapter 2

Except as otherwise provided in this Chapter, the provisions of Chapter 2 applicable to a bill payable on demand apply to a cheque.

131. Presentation of cheque for payment

- (1) Subject to the provisions of this Chapter, this Article applies where a cheque is not presented for payment within a reasonable time of its issue, and the drawer or the person on whose account it is drawn had the right at the time of presentation as between him and the banker to have the cheque paid and suffers loss through the delay. In the absence of extenuating circumstances which can be demonstrated, presentment of a cheque for payment more than six (6) months after issue shall be deemed an unreasonable delay.
- (2) The drawer or person on whose account the cheque is drawn is discharged to the extent of his loss, that is to say, to the extent to which such drawer or person is a creditor of such banker, to a larger amount than he would have been had such cheque been paid.
- (3) In determining what is a reasonable time regard must be had to the nature of the instrument, the custom and usage of bankers, and the facts of the particular case.
- (4) The holder of such cheque as to which such drawer or person is discharged is a creditor, in place of such drawer or person, of such banker to the extent of such discharge, and entitled to recover the amount from the banker.

132. Presentation of cheque for payment: alternative means of presentation by banker

- (1) A banker may present a cheque for payment to the banker on whom it is drawn by notifying him of its essential features by electronic means or otherwise, instead of by presenting the cheque itself, if the banker on whom it is drawn has given his consent to such means of presentation.
- (2) If a cheque is presented for payment under this Article, presentation need not be made at the proper place or at a reasonable hour on a business day.
- (3) If, before the close of business on the next business day following presentation of a cheque under this Article, the banker on whom the cheque is drawn requests the banker by whom the cheque was presented to present the cheque itself:
 - (a) the presentation under this Article is disregarded; and
 - (b) this Article does not apply in relation to the subsequent presentation of the cheque.

- (4) A request under Article 132(3) above for the presentation of a cheque does not constitute dishonour of the cheque by non-payment.
- (5) Where presentation of a cheque is made under this Article, the banker who presented the cheque and the banker on whom it is drawn are subject to the same duties in relation to the collection and payment of the cheque as if the cheque itself had been presented for payment.
- (6) For the purposes of this Article, the essential features of a cheque are:
 - (a) the serial number of the cheque;
 - (b) the code which identifies the banker on whom the cheque is drawn;
 - (c) the account number of the drawer of the cheque; and
 - (d) the amount of the cheque which is entered by the drawer of the cheque.

133. Cheques presented for payment under Article 132; disapplication of Article 117

Article 117(4) (Duties of holder as regards drawee or acceptor):

- (a) so far as relating to presenting a bill for payment, does not apply to presenting a cheque for payment under Article 132 above; and
- (b) so far as relating to a bill which is paid, does not apply to a cheque which is paid following presentation under that Article.

134. Revocation of bank's authority

The duty and authority of a banker to pay a cheque drawn on him by his customer are determined by:

- (a) the customer stopping the cheque; or
- (b) notice of the customer's death.

135. Crossed cheques

Where a cheque bears the words 'not negotiable' on it, the cheque is not a bill and is not negotiable, and a transferee of the cheque cannot obtain a better title to the cheque than the transferor.

CHAPTER 4 – PROMISSORY NOTES

136. Delivery necessary

A promissory note is incomplete until delivered to the payee or bearer.

137. Joint and several notes

A promissory note may be made by two or more makers, and they may be liable thereon jointly, or jointly and severally according to its terms.

138. Note payable on demand

- (1) Where a promissory note payable on demand has been endorsed, it must be presented for payment within a reasonable time of the endorsement. If it be not so presented the endorser is discharged.
- (2) In determining what is reasonable time, regard must be had to the nature of the instrument, the custom, and the facts of the particular case.

- (3) Where a promissory note payable on demand is negotiated, it is not deemed to be overdue, for the purpose of affecting the holder with defects of title of which he had no notice, by reason that it appears that a reasonable time for presenting it for payment has elapsed since its issue.

139. Presentation of promissory note for payment

- (1) Where a promissory note is payable at a particular place by its terms, it must be presented for payment at that place in order to render the maker liable. In any other case, presentation for payment is not necessary in order to render the maker liable.
- (2) Presentation for payment is necessary in order to render the endorser of a promissory note liable.
- (3) Where a promissory note is payable at a particular place by its terms, presentation at that place is necessary in order to render an endorser liable; but when a place of payment is indicated by way of memorandum only, presentation at that place is sufficient to render the endorser liable, but a presentation to the maker elsewhere, if sufficient in other respects, is also sufficient.

140. Liability of maker

The maker of a promissory note by making it:

- (a) promises that he will pay it according to its terms; and
- (b) is precluded from denying to a holder in due course the existence of the payee and his then capacity to endorse.

141. Application of Chapter 2 (Bills of exchange) to notes

- (1) Subject to the provisions in this Chapter, Chapter 2 applies to promissory notes as if:
 - (a) the maker of a promissory note were the acceptor of a bill; and
 - (b) the first endorser of a promissory note was the drawer of an accepted bill payable to drawer's order.
- (2) The following provisions as to bills do not apply to notes; namely, provisions relating to:
 - (a) presentation for acceptance; and
 - (b) acceptance.

CHAPTER 5 – CHEQUES AND OTHER INSTRUMENTS

142. Relevant instruments

In this Chapter, 'instrument' includes:

- (a) a cheque;
- (b) a banker's draft; and
- (c) any other instrument issued by a customer of a banker intended to enable a person to obtain payment of a sum specified in the instrument from the banker,

whether or not negotiable.

143. General and special crossings defined

- (1) Where an instrument bears across its face an addition of:

- (a) the words ‘and company’ or any abbreviation thereof between two parallel transverse lines, either with or without the words ‘not negotiable’; or
 - (b) two parallel transverse lines simply, either with or without the words “not negotiable” that addition constitutes a crossing, and the instrument is crossed generally.
- (2) Where an instrument bears across its face an addition of the name of a banker, either with or without the words “not negotiable”, that addition constitutes a crossing, and the instrument is crossed specially and to that banker.

144. Crossing by drawer or after issue

- (1) An instrument may be crossed generally or specially by the drawer.
- (2) Where an instrument is uncrossed, the holder may cross it generally or specially.
- (3) Where an instrument is crossed generally the holder may cross it specially.
- (4) Where an instrument is crossed generally or specially, the holder may add the words “not negotiable”.
- (5) Where an instrument is crossed specially, the banker to whom it is crossed may again cross it specially to another banker for collection.
- (6) Where an uncrossed instrument, or an instrument crossed generally, is sent to a banker for collection, he may cross it specially to himself.

145. Crossing a material part of instrument

A crossing authorised by this Law is a material part of the instrument; a person may not obliterate, add to or alter the crossing except as permitted in this Part 6, and Part 7.

146. Duties of bank as to crossed instruments

- (1) Where an instrument is crossed specially to more than one banker (other than where crossed to an agent for collection who is a banker) the banker on whom it is drawn shall refuse payment of it.
- (2) A banker on whom a crossed instrument is drawn:
 - (a) must not pay the instrument other than to a banker; and
 - (b) if the instrument is crossed specially, must not pay the instrument other than to the bank to whom it is crossed (or his agent for collection who is a bank).
- (3) A banker who fails to comply with Article 146(2) is liable to the true owner of the instrument for any loss he may incur as a result of the payment in breach of that Article, provided that a banker paying the instrument in good faith and without negligence is not responsible and does not incur any liability, and such payment is valid.

147. Protection to banker and drawer where instrument is crossed

Where the bank, on whom a crossed instrument (including an instrument which under Article 148 below or otherwise is not transferable) is drawn, in good faith and without negligence pays it, if crossed generally, to a bank, and if crossed specially, to the bank to whom it is crossed, or his agent for collection being a banker, the banker paying the instrument and, if the instrument has come into the hands of the payee, the drawer shall respectively be entitled to the same rights and be placed in the same position as if payment of the instrument had been made to the true owner thereof.

148. Non-transferable instruments

- (1) Where an instrument is crossed and bears across its face the words 'account payee' or 'a/c payee', either with or without the word 'only', the instrument shall not be transferable, but shall only be valid as between the parties named on it.
- (2) A banker is not to be treated for the purposes of Article 147 above as having been negligent by reason only of his failure to concern himself with any purported endorsement of an instrument which under Article 148(1) above or otherwise is not transferable.

149. Protection of bankers paying unendorsed or irregularly endorsed instruments

- (1) This Article 149 applies where a banker in good faith and in the ordinary course of business pays an instrument.
- (2) A banker does not incur any liability by reason only of the absence of, or irregularity in, endorsement of the instrument, and the payment discharges the instrument.

150. Protection of bankers collecting payment of instruments

- (1) Article 150 applies where a banker, in good faith and without negligence:
 - (a) receives payment for a customer of an instrument; or
 - (b) having credited a customer's account with the amount of such an instrument, receives payment thereof for himself;and the customer has no title, or a defective title, to the instrument.
- (2) A banker does not incur any liability to the true owner of the instrument by reason only of having received payment for the customer.
- (3) A banker is not to be treated for the purposes of this Article 150 as having been negligent by reason only of his failure to concern himself with absence of, or irregularity in, endorsement of an instrument.

151. Obligation of bankers to pay cheques

- (1) A banker is bound to pay cheques drawn on him by a customer in legal form within a reasonable time provided he has in his hands at the time sufficient and available funds belonging to the customer for the purpose, or provided the cheques are within the limits of an agreed overdraft, subject to Article 151(2).
- (2) A banker must not continue to pay cheques without inquiry if a reasonable and honest banker with knowledge of the relevant facts would have considered that there was a serious or real possibility that the customer was being defrauded or that Moneys were being misappropriated.

152. Protection of bankers paying bearer cheques

- (1) A banker who in good faith and without negligence pays a bearer cheque on presentation is free from all liability, and may debit his customer, even if the holder has no title or a defective title to the cheque.
- (2) Exemption from liability under Article 152(1) is a defence to an action for wrongful interference with property under Chapter 6 of Part 3.

153. Rights of bankers collecting cheques not endorsed by holders

A banker who receives a cheque payable to order which the holder delivers to him for collection without endorsing it, has such (if any) rights as he would have had if, upon delivery, the holder had endorsed it in blank.

CHAPTER 5A – TRADE DOCUMENTS**153A. Paper trade document defined**

- (1) A document is a “paper trade document” for the purposes of this Law if:
 - (a) it is in paper form; and
 - (b) it is commonly used in connection with:
 - (i) trade in or transport of goods; or
 - (ii) financing such trade or transport; and
 - (c) possession of the document is required as a matter of law or commercial custom, usage or practice for a person to claim performance of an obligation.
- (2) A bill of exchange and a promissory note are examples of documents that, if they fall within Article 153A, will be paper trade documents.

153B. Electronic Trade Document defined

- (1) This Article 153B applies where information in electronic form is information that, if contained in a document in paper form, would lead to the document being a paper trade document.
- (2) The information, together with any other information with which it is logically associated that is also in electronic form, constitutes an Electronic Trade Document for the purposes of this Law if a reliable system is used to:
 - (a) identify the document so that it can be distinguished from any copies;
 - (b) protect the document against unauthorised alteration;
 - (c) secure that a person can have control of the document within the meaning of Article 153C; and
 - (d) indicate the time or place with respect to the document, where such indication is required or permitted under the law governing the document.
- (3) When determining whether a system is reliable for the purposes of Article 153B(2), the matters that may be taken into account include:
 - (a) any rules of the system that apply to its operation;
 - (b) any measures taken to secure the integrity of information held on the system;
 - (c) any measures taken to prevent unauthorised access to and use of the system;
 - (d) the security of the hardware and software used by the system;
 - (e) the regularity of and extent of any audit of the system by an independent body;
 - (f) any assessment of the reliability of the system made by a body with supervisory or regulatory functions;

- (g) the provisions of any voluntary scheme or industry standard that apply in relation to the system.

153C. Control defined

- (1) For the purpose of Article 153B, a person has control of the document if:
 - (a) subject to Articles 153C(2) and 153C(3), the Electronic Trade Document, or the relevant protocol or system, confers on that person:
 - (i) the exclusive ability to prevent others from obtaining substantially all the benefit from the Electronic Trade Document;
 - (ii) the ability to obtain substantially all the benefit from the Electronic Trade Document; and
 - (iii) the exclusive ability to transfer the abilities in Articles 153C(1)(a)(i) and 153C(1)(a)(ii) to another person (a ‘change of control’);
 - and,
 - (b) the Electronic Trade Document, or the relevant protocols or system, allows that person to identify itself as having the abilities set out in Article 153C(1)(a).
- (2) If the Electronic Trade Document is a Digital Asset, a change of control includes the replacement, modification, destruction, cancellation, or elimination of a Digital Asset, and the resulting and corresponding derivative creation of a new Digital Asset which is subject to the control of another person.
- (3) An ability for the purposes of Article 153C(1)(a) need not be exclusive if and to the extent that:
 - (a) if the Electronic Trade Document is a Digital Asset, the Digital Asset, or the relevant protocol or system, limits the use of, or is programmed to make changes to, the Digital Asset, including change or loss of control of the Digital Asset; or
 - (b) irrespective of whether the Electronic Trade Document is a Digital Asset, the person in control has agreed (expressly, by implication or by conduct) to sharing that ability with one or more other persons.
- (4) Reading or viewing a document is not, of itself, sufficient to amount to control for the purposes of this Article 153C.

153D. Possession, indorsement and effect of Electronic Trade Documents

- (1) A person may possess, indorse and part with possession of an Electronic Trade Document.
- (2) An Electronic Trade Document has the same effect as an equivalent paper trade document.
- (3) Anything done in relation to an Electronic Trade Document has the same effect (if any) in relation to the document as the equivalent action would have in relation to an equivalent paper trade document.

153E. Change of form

- (1) A paper trade document may be converted into an Electronic Trade Document, and an Electronic Trade Document may be converted into a paper trade document, if (and only if):
 - (a) a statement that the document has been converted is included in the document in its new form; and

- (b) any contractual or other requirements relating to the conversion of the document are complied with.
- (2) Where a document is converted in accordance with Article 153E(1):
 - (a) the document in its old form ceases to have effect; and
 - (b) all rights and liabilities relating to the document continue to have effect in relation to the document in its new form.

153F. Exceptions

- (1) If an intention that Article 153D should not apply in relation to an Electronic Trade Document appears in, or can reasonably be inferred from, the document or terms that have effect in relation to the document:
 - (a) that section does not apply in relation to the document, and
 - (b) Article 153E also does not apply in relation to it.
- (2) Articles 153A to 153E do not apply in relation to:
 - (a) Financial Collateral; or
 - (b) Non-Intermediated Financial Property.
- (3) The Board of Directors of the DIFCA may by Regulations add, remove or amend an entry in the list in Article 153F(2).

153G. Issue or use outside the DIFC

An Electronic Trade Document shall not be denied legal effect, validity or enforceability on the sole ground that it was issued or used outside the DIFC.

PART 7: OBLIGATIONS RELATING TO BANKING

154. Application

- (1) The obligations in this Part apply to bankers.
- (2) A banker is a person, whether incorporated or not, which carries on banking business as defined in the rules made under the Regulatory Law 2004.
- (3) A banker is:
 - (a) a bank; or
 - (b) another body where such a status is supported by a reasonable consideration of all the relevant facts.
- (4) In determining whether a person is a customer of a banker the following rules will apply:
 - (a) a person is a customer of a banker if the banker has accepted his instruction to open an account or has opened an account in his name; and
 - (b) in all other cases it is a question to be determined by a reasonable consideration of all relevant facts.

155. Duty of confidentiality of a banking business

- (1) A banking business is under a duty of confidentiality to a customer in accordance with Article 37 (Breach of confidence).
- (2) The duty of confidentiality required under Article 155(1) survives termination of the banking relationship between the banking business and the customer.

156. Duties of a banker

A banker is not a fiduciary of a customer by virtue only of the relationship between the banker and the customer.

PART 8: FIDUCIARY DUTIES**157. Application**

- (1) This Part applies to any person who, in relation to another person (his "principal"), is a fiduciary.
- (2) This Part does not apply to the relationship arising under agency.

158. Fiduciary status

- (1) A person is the fiduciary of another if he has undertaken (whether or not under contract) to act for or on behalf of another in a matter in circumstances which give rise to a relationship of trust and confidence.
- (2) It is presumed unless demonstrated to the contrary that persons acting in the following capacities are fiduciaries:
 - (a) an attorney, as to his clients;
 - (b) an employee, as to his employer;
 - (c) a director of a company, as to the company;
 - (d) a partner of a partnership, as to the other partners;
 - (e) a member of a limited liability partnership, as to the limited liability partnership;
 - (f) a receiver of a company, as to the company; and
 - (g) a trustee, as to the beneficiaries of the trust.
- (3) In all other situations it is a question of fact whether in all the circumstances of the case a person is a fiduciary.

159. Fiduciary duties

- (1) A fiduciary acting in his capacity as such is under an obligation of loyalty to his principal.
- (2) A fiduciary's obligation of loyalty comprises such of the duties as set out in Schedule 3 as are appropriate in all the circumstances of the relationship between the fiduciary and his principal.
- (3) A fiduciary may exclude or restrict his obligation of loyalty under this Article by contract with his principal, subject to the Implied Terms in Contracts and Unfair Terms Law.

160. Consequences of breach

- (1) Where a fiduciary breaches his obligation of loyalty:
 - (a) he is liable to pay damages to his principal in respect of any loss suffered by the principal in accordance with the Law on Damages and Remedies; and
 - (b) he is liable to account to his principal for any benefit he has acquired in consequence of the breach.
- (2) Where a fiduciary:
 - (a) enters into an agreement with his principal; or
 - (b) deals or agrees to deal with any property of his principal

in breach of his obligation of loyalty, the principal may apply to the Court to set aside the agreement or deal.

SCHEDULE 1

1. Rules of interpretation

- (1) In this Law, a reference to:
- (a) a statutory provision includes the statutory provision as amended or re-enacted from time to time;
 - (b) a person includes
 - (i) a natural person or a body corporate;
 - (ii) a government, state, state agency, company, partnership or unincorporated association; and
 - (iii) a body of persons, whether incorporated or not.
 - (c) an obligation to publish or cause to be published a particular document shall, unless expressly provided otherwise in this Law, include publishing or causing to be published in printed or electronic form;
 - (d) a day shall refer to a business day, being a calendar day, excluding Saturdays, Sundays and official public holidays;
 - (e) a calendar year shall mean a year of the Gregorian calendar;
 - (f) a reference to the masculine gender includes the feminine.
- (2) The headings in this Law shall not affect its interpretation.
- (3) References in this Law to a body corporate include a body corporate incorporated outside DIFC.
- (4) A reference in this Law to a Part, Article or Schedule by number only, and without further identification, is a reference to the Part, Article or Schedule of that number in this Law.
- (5) A reference in an Article or other division of this Law to a paragraph, sub-paragraph or Article by number or letter only, and without further identification, is a reference to the paragraph, sub-paragraph or Article of that number or letter contained in the Article or other division of this Law in which that reference occurs.
- (6) Unless the context otherwise requires, where this Law refers to an enactment, the reference is to that enactment as amended from time to time, and includes a reference to that enactment as extended or applied by or under another enactment, including any other provision of that enactment.
- (7) References in this Law to a writing, filing, instrument or certificate include any mode of communication that preserves a record of the information contained therein and is capable of being reproduced in tangible form, including by electronic means.

2. Legislation in the DIFC

References to legislation and Guidance in the Law shall be construed in accordance with the following provisions:

- (a) Federal Law is law made by the federal government of the United Arab Emirates;
- (b) Dubai Law is law made by the Ruler, as applicable in the Emirate of Dubai;
- (c) DIFC Law is law made by the Ruler;
- (d) the Law is The Law of Obligations, DIFC Law No. 5 of 2005, made by the Ruler under Dubai Law;

- (e) the Personal Property Law is The Personal Property Law, DIFC Law No. 9 of 2005, made by the Ruler under Dubai Law;
- (f) the Contract Law is The Contract Law, DIFC Law No. 6 of 2004, made by the Ruler under Dubai Law;
- (g) the Companies Law is The Companies Law, DIFC Law No. 5 of 2018, made by the Ruler under Dubai Law;
- (h) the Court Law is The DIFC Court Law, DIFC Law No. 10 of 2004, made by the Ruler under Dubai Law;
- (i) the Law of Damages and Remedies is The DIFC Law of Damages and Remedies, DIFC Law No. 7 of 2005, made by the Ruler under Dubai Law;
- (j) Regulations are legislation made by the Board of Directors of the DIFCA under the Law and are binding in nature;
- (k) Guidance is indicative and non-binding and may comprise any standard or code of practice issued by the Board of Directors of the DIFCA which has not been incorporated into the Regulations.

3. Definitions

In the Law, unless the context indicates otherwise, the defined terms listed below shall have the corresponding meanings.

Terms	Definitions
acceptance	An acceptance completed by delivery or notification.
action	Includes counter claim and set off.
banker	Subject to Article 154, means a person whether incorporated or not who carries on the business of banking.
banker's draft	A draft drawn by a banker on himself and payable on demand
bearer	The person in possession of a bill or promissory note which is payable to bearer.
bill	A bill of exchange.
Board of Directors of the DIFCA	The governing body of the DIFCA
cheque	Has the meaning set out in Article 79.
claimant	A person who brings a claim under this Law.
company	A company incorporated under the Companies Law or the laws of any other jurisdiction.
Court	The DIFC Court as established under Dubai Law.
credit	includes a contractual claim for a Digital Asset that is Money.
defendant	A person against whom a claim is brought under this Law.
Delivery	Transfer of possession, from one person to another.
DFSA	The Dubai Financial Services Authority established.
DIFC	The Dubai International Financial Centre.
DIFCA	The DIFC Authority established under Dubai Law No. 9 of 2004.
Digital Asset	has the meaning given in Article 8 of the Digital Assets Law.
Digital Assets Law	the Digital Assets Law No. 2 of 2024.
dishonour	The refusal of a drawee to make payment under an instrument.

document	Includes summons, notice, statement, return, account, order and other legal process, and registers.
drawee	A person ordered in an instrument to make payment.
drawer	A person who signs or is identified in an instrument as a person ordering payment.
Electronic Trade Document	has the meaning given in Article 153B of this Law.
endorsee	A person in whose favour an endorsement is made.
endorsement	A signature on an instrument for the purpose of negotiating the instrument.
endorser	A person who makes an endorsement.
Financial Collateral	Has the meaning given to it in the Law of Security, DIFC Law No. 4 of 2024.
holder	The payee or endorsee of a bill or promissory note who is in possession of it, or the bearer thereof.
holder in due course	Has the meaning set out in Article 96.
immediate party	A person who for the time being is party to an instrument.
Implied Terms in Contracts and Unfair Terms Law	The Implied Terms in Contracts and Unfair Terms Law, DIFC Law No. 6 of 2005.
instrument	Includes any writing.
issue	The first delivery of a bill or promissory note, complete in form to a person who takes it as a holder.
joint liability	Two or more persons are jointly liable if the same facts cause each of them to be liable to the same person in respect of the same loss for all or any portions of such loss.
Law	The Law of Obligations, DIFC Law No. 5 of 2005.
Law of Damages and Remedies	The Law on Damages and Remedies, DIFC Law No. 7 of 2005.
loss	Unless any Article provides otherwise, any of personal injury, physical damage or economic loss.
Monetary Obligation	includes an obligation to pay in a Digital Asset that is Money.
Money	something that functions as a medium of exchange, store of value, and unit of account, and includes a Digital Asset that satisfies these three requirements.
Negotiable Instrument	Has the meaning given in Article 77(1).
Non-intermediated Financial Property	Has the meaning given to it in the Law of Security, DIFC Law No. 4 of 2024.
non-visitor	A person who enters on to the occupier's premises who is not a visitor.
occupier	A person who has control over premises. One set of premises may have more than one occupier.
payment in due course	Payment made at or after the maturity of the bill to the holder thereof in good faith and without notice that his title to the bill is defective.
person	Has the meaning given in Article 1 of Schedule 1 to this Law.
personal injury	Any injury to a person's body or death, but not including psychiatric injury.
Personal Property Law	The Personal Property Law , DIFC Law No. 9 of 2005.
physical damage	Any damage to property or real property.
premises	Any land, building or other structure, or vehicle occupied by the occupier.
President	President of the DIFC.

printed	Includes typewritten and a photocopying of a printed or typewritten document.
prior party	In relation to a party to an instrument (the 'present party'), a person who was a party to the instrument before the present party.
Promissory note	Has the meaning given to it in Article 80.
property	Has the meaning given to it in the Personal Property Law.
public authority	A government department, a government company or a government authority or a governmental agency or institution.
qualified acceptance	An acceptance subject to any condition or qualification.
real property	Has the meaning given to it in the Personal Property Law.
records	Documents and other records however stored.
recognised company	A company incorporated in a jurisdiction other than the DIFC and registered pursuant to Article 91 of the Companies Law.
Regulatory Law	The Regulatory Law, DIFC Law No. 1 of 2004
remote party	A party to an instrument other than an immediate party.
representee	A person: (a) to whom a representation is made, or the principal of that person; (b) to whom the representor knew or intended that the representation should be made known; or (c) who is a member of a class to which the representation is made or intended to be made generally.
representor	A person who makes a representation or is the principal of an agent who, within the scope of his authority, makes a representation.
Ruler	The ruler of the Emirate of Dubai.
several liability	Two or more persons are severally liable if they cause the same loss for which they are not jointly liable.
sum	includes an amount in a Digital Asset that is Money.
transfer of possession	May occur: (a) by physical transfer of the investment; (b) by transfer of any property entitling or enabling possession on the part of the document; or (c) in the case of an instrument not in tangible form, by transfer of control of the instrument.
visitor	A person who enters on to the occupier's premises with the occupier's consent, express or implied.
year	A calendar year having the meaning given in Article 1 of Schedule 1 to the Law.

SCHEDULE 2

GUIDELINES AS TO THE DUTY OF THE BAILEE TO TAKE CARE OF THE PROPERTY BAILED

Article 71 (Duty of the bailee to take care of property bailed)

- (1) The matters to which regard is to be had in particular for the purposes of the duty of the bailee to take such care of the property bailed as is reasonable in all the circumstances are any of the following which appear to be relevant:
 - (a) whether the bailment is contractual or non-contractual, and if non-contractual, whether the bailment is voluntary or involuntary;
 - (b) which of the bailor and bailee (if either) benefits from the bailment;
 - (c) whether the bailor has complied with his obligation under Article 69 (Duty of the bailor to disclose information); and
 - (d) any custom of trade or previous course of dealing between the bailor and the bailee pertinent to the bailment.

- (2) In relation to paragraph 1(a) above:
 - (a) where under a contractual bailment the bailee is a custodian for hire or reward (including without limitation an auctioneer or warehouseman), the bailee is presumed to exercise the standard of care of a professional custodian for hire or reward in relation to property of the type bailed;
 - (b) where under an involuntary bailment the bailee intends to take possession of the property bailed, he is subject to the same standard of care as he would if the bailment were a voluntary bailment;
 - (c) where under an involuntary bailment the bailee does not intend to take possession of the property bailed, he has no obligation under Article 69 until he becomes aware of the bailment.

- (3) In relation to paragraph 1(b) above:
 - (a) in a contractual bailment, it is presumed that the bailment does not benefit either party to the bailment over the other;
 - (b) in a voluntary bailment, it is presumed that where a party receives a corresponding service from the bailor the bailment benefits him as much as it does the bailor; and
 - (c) an involuntary bailment is presumed to be for the benefit of the bailor.

**SCHEDULE 3
FIDUCIARY DUTIES**

Article 159 (Fiduciary duties)

(1) Loyalty

A fiduciary must act in good faith in what he considers to be the interests of the principal without regard to his own interests.

(2) Conflict of interest

(a) A fiduciary must not place himself in a position where his own interest conflicts with that of his principal.

(b) If there is a conflict between an interest or duty of a fiduciary, and an interest of the principal in any transaction, he must account to the principal for any benefit he receives from the transaction.

(c) A Fiduciary does not have to account for the benefit if the interest or duty has been disclosed to and approved by the principal.

(3) No secret profits

A fiduciary must not use the principal's property, information or opportunities for his own or anyone else's benefit unless his principal has consented or the use has been fully disclosed to the principal and the principal has not objected to it.

(4) Confidentiality

A fiduciary must only use information obtained in confidence from his principal for the benefit of the principal, and must not use it for his own advantage or for the benefit of any other person.

(5) Care, skill and diligence

A fiduciary owes the principal a duty to exercise the care, skill and diligence which would be exercised in the same circumstance by a reasonable person having both:

(a) the knowledge and experience that may reasonably be expected of a person in the same position as the fiduciary; and

(b) the knowledge and experience which the fiduciary has.